IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.330 OF 1991

Mayur Sahakari Kukutpalan Sahakari Society Ltd. & Anr. .. Petitioners
Versus
State of Maharashtra & Anr. .. Respondents

Mrs.Vaidehi Kamat l/f. Mr.M.D.Lonkar for petitioner
None for respondent No.2
Mr.K.V.Saste, A.P.P. for State.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 29th November 2005.

P.C.

. This petition under Article 227 of Constitution of India, read with section 482 of Cr.P.C. challenges an order passed by the Chief Judicial Magistrate, Thane in C.C.No.7700 of 1990.

2. Petitioners are original accused Nos. 1

and 2. Second respondent - original complainant had filed said complaint, a copy of which is annexed as Exh.I to the petition.

3. Learned Magistrate upon taking the complaint on record and verifying its contents as well as hearing complainants' Advocate directed that process be issued for offences punishable under section 420 of I.P.C. Learned Judge has specifically recorded that complainant has lost his remedy under Negotiable Instruments Act as amended. However, according to him, contents of the complaint reveal that between the time when the amounts payable by the petitioners herein were due, they allegedly induced him to deliver property on promise to pay amounts. The intention, according to learned Judge, on the part of accused was to deceive and cheat the complainant and so also their dishonest intention being very much apparent from the face of record. According to him, process under section 420

I.P.C. be issued against both accused against payment of process fees.

4. Ms.Kamat, learned Advocate appearing for petitioners contends that the complaint on the face of it, does not disclose any offence, much less, offences punishable under section 420 I.P.C. In her submission, the entire transaction is of buying and selling of goods. Goods were to be as per specifications of petitioners. Supplies were to be made in accordance therewith and, therefore, directions were issued to the bank not to honour post dated cheques. She invites my attention to the correspondence between parties preceding filing of complaint in this behalf. She further submits that there is no question of petitioners inducing, much less, dishonestly, the second respondent - original complainant to supply goods on any promise to pay. She states that petitioners had categorically informed in writing to second

respondent that goods were not as per specifications. She states that as early as on 30th June 1990, petitioners intimated that the goods which are lying with them should be lifted and a date was stipulated in that behalf. Thereafter, it was pointed out that petitioners have not received goods as per supply orders placed and that is how they are not liable to honour post dated cheques. In this background, it is the second respondent who addressed a letter on 10th August 1990 that petitioners owed huge sums to the second respondent. It is stated therein that pursuant to discussion and negotiation and on the assurance that if supplies are resumed and post dated cheques received, outstanding would be cleared that further steps were taken. It is on this alleged understanding that the supplies were resumed from 1st June 1990. She states that the cheques have not been honoured. About 80 per cent of supplies have been made but the amounts under the P.D.Cs. have

not been paid. It is in these circumstances, in this notice second respondent states that if the supplies were resumed relying upon the assurances, then why cheques have been cancelled, is a fact which is not clear to second respondent. Second respondent pointed out that that stand of petitioners is not tenable.

5. However, according to Ms.Kamat, even thereafter, correspondence ensued and the second respondent issued a notice initially invoking provisions of Negotiable Instruments Act on 29th September 1990. However, he proceeded to file a complaint alleging offences punishable under section 420 of I.P.C.

6. In her submission, offences of cheating is complete if inducement is dishonest and thereby property is delivered to any person. She states that in the present case, there is no question of petitioners dishonestly inducing

second respondent to deliver any property. On the own showing of second respondent, he resumed supplies and that too in pursuance of supply order dated 24th May 1990. The supply commenced from that date was not in accordance with the specifications and this fact was known to him and hence the very basis that the initial supplies commenced on the alleged assurance is not correct. The complaint does not disclose commission of any offence. Disputes are essentially civil in nature. At the most a case could be made out for breach of contract but that would not constitute a criminal offence. She relies upon a judgements of the Supreme Court reported in A.I.R. 1954 S.C. 724 and in A.I.R. 1957 S.C. 857 in support of the aforesaid submissions.

7. None appears for original complainant, though served.

8. With the assistance of Ms.Kamat, I have perused annexures to the petition including complaint. Complaint itself, alleges that petitioners had agreed to supply various goods to second respondent. A cheque was received by the second respondent. It is his case that the payment was not made. Post dated cheque was not honoured because payment was stopped by the drawer. The fact of first notice being despatched on 28th September 1990 is also not disputed. Complaint states that no payment was made by the accused.

9. However, in para 5 of the complaint, respondent No.2 alleges that there was an outstanding amount of Rs.4,69,276.46 towards supply in the earlier period. This amount was outstanding and not paid and yet, the complainant dishonestly induced second respondent to supply further material in the month of July 1990. The total amount of supplies earlier effected and

those made in July is worth Rs.5,21,311.37. This amount was demanded and the petitioners issued post dated cheques which were dishonoured. It is on this basis that the second respondent alleges that the intention of the accused is dishonest and cheques are issued to cheat and cause loss in business. There is huge amount outstanding alongwith interest.

10. From reading of paras 5 and 6 of the complaint, it is apparent that all that second respondent alleges is that P.D.Cs. have been dishonoured without any basis. Mere dishonour of cheques, according to complainant is enough to allege offence punishable under section 420 of I.P.C. Complaint is silent about alleged inducement, much less, at whose instance. Complaint is also silent about any dishonesty inasmuch as it is not the case of complainant that the goods were not supplied or that the cheques were not issued at all. Therefore,

stopping of payment of these cheques on account of a notice to the bank is the basis of offence of cheating, according to complainant.

11. In my view, considering the fact that the complaint itself alleges breach of the obligation under contract of supply of goods and that P.D.Cs. were issued but payment under them was later on stopped would not without in any manner constitute an offence punishable under section 420 of I.P.C. Complaint, therefore, does not disclose any offence punishable under the said provision. Already, the complainant has lost his remedy under section 138 of Negotiable Instruments Act. Dispute, essentially, arises out of a transaction of supply of goods and the complaint allegations would constitute nothing but a charge of breach of contract or obligations thereunder. Allowing a complaint making aforesaid grievance to proceed would clearly be an abuse of the process of Court.

12. For all these reasons, petition succeeds. Rule is made absolute in terms of prayer clause (a).

(S.C.DHARMADHIKARI, J)

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CRIMINAL WRIT PETITION NO.333 OF 1991

Mayur Sahakari Kukutpalan Sahakari Society Ltd. & Anr. .. Petitioners
Versus
State of Maharashtra & Anr. .. Respondents

Mrs.Vaidehi Kamat l/f. Mr.M.D.Lonkar for petitioner
None for respondent No.2
Mr.K.V.Saste, A.P.P. for State.

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. Save and except the cheque numbers all the other facts are identical. Therefore, for the reasons recorded in Cri.W.P.330 of 1991 this petition also succeds in the same terms.

(S.C.Dharmadhikari, J).